

SUMMARY OF THE “SECURE AND SAFE DETENTION AND ASYLUM ACT” LIEBERMAN-BROWNBACK AMENDMENT #3253

The Lieberman-Brownback amendment implements the key recommendations of the US Commission on International Religious Freedom (USCIRF), which issued a critical report last year describing procedures that impair the right to seek asylum, and poor treatment of asylum seekers held in detention. As a result of new Department of Homeland Security (DHS) initiatives, and provisions in both Senate bills, the population of non-criminal aliens being detained with criminals in maximum security facilities will increase rapidly. For that reason the amendment would also improve poor conditions that exist at immigration detention facilities generally, and promote alternatives to detention so that limited detention beds can be used most efficiently.

Recording interviews ensures persecuted aliens aren’t turned back

The USCIRF report found that Customs and Border Protection (CBP) inspectors at ports of entry (POEs) often fail to follow procedures designed to ensure arriving aliens can express a fear of persecution. For example, CBP inspectors often fail to record the alien’s statement properly, and fail to read it back before the sworn statement is signed. Immigration judges rely heavily on these sworn statements when deciding if an alien should be granted asylum, and supposed contradictions between the initial statement and later claims are a frequent justification for denying asylum. The Lieberman-Brownback amendment implements the USCIRF recommendation that interviews at POEs be videotaped to ensure that procedures are followed by CBP. The recording could be considered as evidence in immigration court proceedings. Accurate translation services would also be mandated.

Mandating hearings on release determinations prevents unjust detentions

Arriving aliens apprehended at POEs or at the borders are initially detained. Many of these are part of a group that must be detained by law (known as mandatory detention). DHS is supposed to offer parole hearings for everyone else (most of whom are asylum seekers), but USCIRF found there were no consistent criteria, the delays are often so long that the review becomes pointless, and aliens often don’t know to ask for the review. By regulation this population is not entitled to a bond hearing before an immigration judge. Aliens apprehended in the interior are entitled to a bond hearing before an immigration judge, but they often don’t know to ask for it and there are no clear criteria for those cases either. As a result, a large number of asylum seekers apprehended upon arrival sit in prisons and jails for months without being considered for release. The amendment would mandate an initial parole determination be made by DHS within 72 hours of the alien’s detention, and a de novo review by an immigration judge within two weeks after that. The amendment also establishes consistent criteria for the release determination. An alien in mandatory detention would not be entitled to a review.

Legal Orientation Programs improve aliens’ understanding and reduces costs

In recent years, Congress has appropriated funds for Legal Orientation Programs (LOP) for immigration detainees. The programs consist of live group presentations made by non-governmental agencies to aliens in immigration detention prior to their first hearing before an immigration judge. The USCIRF Study found LOP contributes substantially to the efficiency of the removal process and reduces detention costs. The programs facilitate the alien’s understanding of

whether he or she may have a legitimate claim or should instead dissolve his or her application and return home. The Lieberman-Brownback amendment implements the USCIRF recommendation for nationwide expansion of the program.

Provide humane treatment for all and tailored standards for non-criminals

DHS maintains its own detention facilities, and contracts with county jails and other prison facilities to house the majority of its detainees. Virtually all the facilities are run as maximum security prisons, and in many cases detainees share cells with convicted criminals. DHS has a manual of detention standards, but the Department takes no regular action to enforce the standards; USCIRF and a number of other reports have documented serious abuses, and the UN High Commissioner for Refugees has repeatedly criticized our detention of asylum seekers as inconsistent with U.S. treaty obligations. The Lieberman-Brownback amendment directs the Secretary to develop new standards or modify existing standards to improve detention conditions in several areas, including the use of shackling and solitary confinement, and access to legal counsel and medical care. Non-criminal non-violent detainees would have to be separated from inmates with criminal convictions, and the Secretary would have to promulgate standards addressing the unique needs of asylum seekers, victims of torture, families with minor children, and other vulnerable populations.

An Office of Detention Oversight will facilitate meaningful supervision

To ensure that detention standards are fully implemented and enforced, the amendment establishes an Office of Detention Oversight within DHS to conduct inspections of detention facilities and investigations; receive and review written complaints from detainees; and report to the Secretary and to Immigration and Customs Enforcement its findings of a detention facility's noncompliance with standards. It also requires an annual report to the Secretary and Congress on the Office's findings and actions taken to remedy problems. This provision codifies, strengthens and expands an existing office in DHS.

Rely more on humane alternatives to prisons and jails

To reduce detention costs, Congress has experimented with programs known as "alternatives to detention." Under these programs aliens can be released to an enhanced supervision program that ensures aliens appear at immigration hearings by requiring regular check-ins with a caseworker and the use of electronic ankle bracelets. The amendment requires the nation-wide expansion of a "secure alternatives" program based on an existing pilot. The USCIRF study also concluded that detention conditions are inappropriately punitive and recommended that DHS expand the use of secure facilities like one used in Broward County, Florida, which are secure but allow for greater freedom of movement. The amendment directs the Secretary to expand the use of less restrictive detention facilities and suggests criteria for them.